

# Split Estates

*The relationship  
between surface and minerals*

**A report to the 60th Legislature  
September 2006**

**The House Bill 790 Split Estates/Coal Bed Methane  
Subcommittee of the Environmental Quality Council**

NOTE: This version of the report, provided to the subcommittee prior to its April 24 meeting, is the first draft. The subcommittee will review this draft, provide input and then review another revised draft at its May meeting. Revisions from that draft will be incorporated into yet another version that will be made available for public comment.

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## The House Bill 790 Split Estates/Coal Bed Methane Subcommittee of the Environmental Quality Council

### Environmental Quality Council Members

Rep. Norma Bixby  
Mr. Brian R. Cebull  
Sen. Dan McGee, Vice Chair  
Mr. Douglas S. McRae  
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Mr. Joe Owen  
Mr. Jim Rogers  
Ms. Lila Taylor  
Mr. Bruce Williams  
Mr. David Woodgerd

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Sen. Glenn Roush

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## Introduction

From its first meeting in Havre in August of 2005, the House Bill 790 Subcommittee of the Environmental Quality Council dedicated its interim work to finding out the facts about oil and gas development in Montana; specifically the issues surrounding split estates and coal bed methane development.

To fulfill that goal, members hit the road. Field hearings were held in Havre, Sheridan, Wyo., and Sidney in addition to six meetings in Helena. Public comment was heavily solicited -- press releases went to all regional newspapers and other media outlets. Issues open to comment at the meetings included reclamation and bonding for oil and gas operations and how to handle split estates, the situation that arises when one party owns surface rights to land and another party owns the mineral rights below the property.

The public responded with several hours of comment at each of the field hearings. A total of nearly 80 people testified at those three hearings. Public comment was taken at each of the Helena meetings as well.

Committee members traveled a total of more than 1,600 miles to the three field hearings, which also included tours of conventional gas operations, oil wells, and coal bed methane facilities. Enduring dusty roads in busses and the extremes of Montana weather -- the temperature in Havre passed 100 degrees while the cold in Sidney was below zero -- the panel members saw first-hand how oil and gas operations are conducted and reclaimed.

Included in this report are the committee's findings and recommendations in each of the study areas mandated by HB 790. Also detailed extensively is the research the committee reviewed and considered, more details on the solicitation of public comment and site tours, and the decision making process the committee undertook to arrive at its conclusions.

## Findings and Recommendations

Based on the direction of House Bill 790, (**Appendix ??**) the subcommittee delved into nine areas; conducting research, attending presentations and listening to public comment. Following are the specific subjects as well as findings and recommendations. Recommended legislation is included in the bill draft located in **Appendix ??**. The proposed brochure is in **Appendix ??**.

*Study the procedures and time lines for giving notice to surface owners.*

**Finding:** Much public testimony centered around what some perceive to be a lack of informed communication between mineral developers and surface owners. Many of those commenting said communication needs to be improved.

**Recommendation:** The EQC should produce an informational brochure that explains, among other things, the history of split estates, the process of mineral leasing and the rights of the surface owner and mineral developer. It should be easy to reproduce, including being downloadable from the Internet and should serve as a gateway information source for the owners of minerals and surface.

**Recommendation:** The brochure should be required by statute to be distributed when seismic exploration activity is conducted as well as when the mineral developer provides notice of drilling operations to the surface owner.

**Finding:** Many surface owners said the current 10 day minimum notice of drilling operations is not long enough to plan for the effects of drilling on the property. While industry representatives said the current notice time line works well, many also said they provide more than 10 days notice.

**Finding:** Wyoming and North Dakota require 30 days and 20 days notice respectively.

**Recommendation:** Legislation should extend the minimum notice period to 20 days and the maximum notice to 180 days. Legislation should allow the surface owner to waive the notice requirement.

**Recommendation:** Legislation should establish a penalty for violations of the notice requirement. The penalty would be administered by the Board of Oil and Gas Conservation.

*Study minimum provisions for surface use agreements. Elements that should be considered include road development, onsite water impoundments, quality and disposal of produced water.*

**Finding:** Industry representatives testified that requiring surface use agreements and mandating what should be included in them infringes upon private negotiations between a surface owner and a mineral developer. They also said such provisions could limit what could be negotiated.

**Recommendation:** Surface use agreements and minimum provisions should not be required. However, the EQC should produce an informational brochure that outlines items that could be negotiated in an agreement. The brochure should be required by statute to be distributed when seismic exploration activity is conducted as well as when the mineral developer provides notice of drilling operations to the surface owner.

**Recommendation:** Legislation should clarify that prior to drilling operations, the surface owner and mineral developer shall attempt to negotiate damages.

*Study how to address disagreements on estimated damages.*

**Finding:** Both surface owners and mineral developers said disagreements over damages do occur, for a variety of reasons. Wyoming has in place a government mediation program as well as an outside organization that can mediate disputes. Some states use forms of arbitration. Both Wyoming and the Bureau of Land Management allow mineral developers to post a surface bond if an agreement on damages cannot be reached.

**Recommendation:** Legislation should propose that the Board of Oil and Gas Conservation draft rules to allow surface bonding when agreements cannot be reached. Drilling could occur after the bond amount is set and filed. The bond would be held until an agreement is reached and then returned to the mineral developer or, if an agreement is not reached, forfeited to the surface owner to pay for damages.

**Recommendation:** Legislation should note that at any point during the negotiations, the surface owner and mineral developer may enter into dispute resolution processes, including mediation.

**Recommendation:** The EQC should support the efforts of outside organizations that may offer mediation services to surface owners and mineral developers.

*Study bonding requirements based on the type of activity.*

**Finding:** From site tours in Havre, Sidney and the Decker area, it is clear that conventional gas, oil and coal bed methane operations have very different effects on the surface. Even different types of oil drilling operations may have unique surface impacts.

**Recommendation:** Legislation should propose that the Board of Oil and Gas Conservation draft rules to allow surface bonding when agreements cannot be reached. The legislation should mandate that when determining the bond, the board administrator take into account the type of damages the proposed activity may cause to the surface.

*Assess current reclamation/bonding requirements for coal bed methane operations.*

Research included Tom Richmond presentations in Sidney and Helena as well as review of current laws and regulations, including the coal bed methane protection program (76-15-905), the requirements for coal bed methane wells that produce water (82-11-175) and the Board of Oil and Gas Conservation's operating practices for CBM wells in the Powder River Basin (Order 99-99). Also considered were presentations from the BLM as well as the BLM policy for bonding impoundment pits in Wyoming.

**Finding: ???**

**Recommendation: ???**

*Evaluate statutes for surface damage, coal bed methane exploration, coal bed methane operations, and coal bed methane reclamation.*

Research included Tom Richmond presentations in Sidney and Helena as well as review of current laws and regulations, including the coal bed methane protection program (76-15-905), the requirements for coal bed methane wells that produce water (82-11-175) and the Board of Oil and Gas Conservation's operating practices for CBM wells in the Powder River Basin (Order 99-99). Also considered were presentations from the BLM as well as the BLM policy for bonding impoundment pits in Wyoming.

**Finding: ???**

**Recommendation: ???**

*Explore approaches for balancing mineral rights and surface rights.*

**Finding:** The history of split estates in this country holds that in order for the mineral right to be recognized as an asset, there must be reasonable access to it. That means the mineral owner must be allowed onto the surface. But the owner of the surface also has rights and is entitled to damages caused by the extraction of the mineral.

**Recommendation:** Legislation should clarify that prior to drilling operations, the surface owner and mineral developer shall attempt to negotiate damages.

**Recommendation:** Legislation should propose that the Board of Oil and Gas Conservation draft rules to allow surface bonding when agreements cannot be reached.

**Recommendation:** Legislation should note that at any point during the negotiations, the surface owner and mineral developer may enter into dispute resolution processes, including mediation.

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**Recommendation:** The brochure should be required by statute to be distributed when seismic exploration activity is conducted as well as when the mineral developer provides notice of drilling operations to the surface owner.

*Identify the relationship between federal law and state law related to split estates.*

Research included presentations by BLM and state officials. Review of current laws and regulations. Correspondence between BLM and Wyoming regarding split estates. Report from BLM split estate meeting.

**Finding:** ???

**Recommendation:** ??? Brochure

*Evaluate necessity and feasibility of post-operation reclamation requirements or alternatives, including water pits and impoundments.*

Research included Tom Richmond presentations in Sidney and Helena as well as review of current laws and regulations, including the coal bed methane protection program (76-15-905), the requirements for coal bed methane wells that produce water (82-11-175) and the Board of Oil and Gas Conservation's operating practices for CBM wells in the Powder River Basin (Order 99-99). Also considered were presentations from the BLM as well as the BLM policy for bonding impoundment pits in Wyoming.

**Finding:** ???

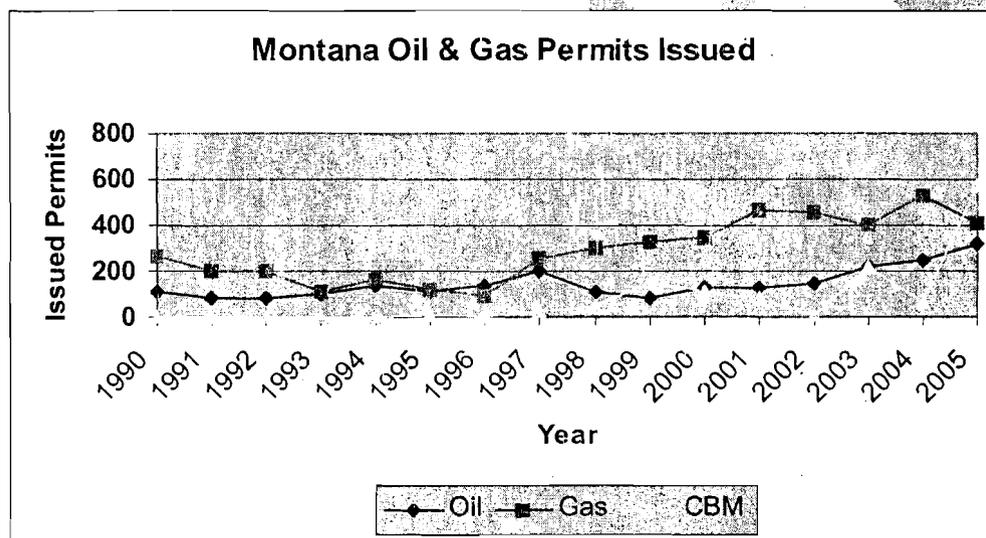
**Recommendation:** ???

## Chapter 1 - Split Estate and Coal Bed Methane Issues Rise to the Fore

The early 1990s were mostly slow years for oil and gas drilling in Montana. It wasn't until 1997 that the Montana Board of Oil and Gas Conservation issued more than 400 drilling permits in a single year.

But new technologies, increasing demand, and the emergence of coal bed methane gas as an energy source have contributed to a resurgence in mineral development. Drilling for oil, conventional natural gas, and coal bed methane has increased in recent years. In 2005, the Board of Oil and Gas Conservation issued 1,305 drilling permits for those minerals.

The increased drilling activity likely played a role in the heightened awareness of split estate issues in Montana.



A split estate occurs when the right to develop oil or gas deposits has been severed from the surface lands. Therefore, one party will own the land, including grass, trees and dirt, but another party owns the right to develop the underlying oil or gas deposits. Sometimes, it helps to think of a plot of land as a bundle of sticks, each stick representing a property right. The right to plow or build on the surface is one stick, the right to mine or drill for minerals is another stick.

Prior to colonization of the United States, the English recognized the importance of reserving mineral rights for the government. In other words, governments have long retained the right to develop valuable deposits of gold, silver, oil and gas. As land was settled in Montana and the rest of the West under numerous Homestead Acts, the government reserved the rights to develop coal and other minerals. **(For more details Appendix XX Krista's memo)**

Because mineral rights were reserved under the Homestead Acts, the federal government is the largest owner of minerals. In Montana, the Bureau of Land Management owns nearly 8 million acres of surface land and administers more than 37 million acres of subsurface rights, which are typically leased. About 5 million acres of BLM oil and gas deposits are under private land. The state of Montana, which also leases mineral rights, owns nearly 5

million acres of surface lands and mineral rights, and 1.3 million acres of only mineral rights. Private owners may sell the surface to one party and the minerals to another. Or, the owner of an estate may sell the surface but retain the minerals. Between federal, state and private ownership of either estate, there could be any combination of ownership. **(Appendix ??)**

Both the surface and mineral owners in a split estate have property rights. But courts have held that the mineral right has no value unless the oil or gas can be removed from the ground. That means mineral owners have the right to reasonable use of the surface, regardless of whether or not the surface owner grants permission. However, state and federal regulations further define this relationship. Many states, including Montana, have laws that regulate how surface owners are compensated for the use of their land during mineral development. **(Appendix??? laws spreadsheet)**

During the 2005 Legislature, lawmakers considered several measures dealing directly or indirectly with split estates and coal bed methane. Two of the most high profile were Senate Bills 258 and 336.

Carried by Sen. Mike Wheat of Bozeman, SB258 would have required the developer provide notice of upcoming drilling activity to the surface owner 45 days before commencement. Current law is 10 days. Among other things, the measure also would have required the mineral developer and the surface owner to enter into "good faith" negotiations to determine the compensation due the surface owner for damages to the land during development. If no agreement could be reached, the developer would have been required to post a bond.

Senate Bill 336, proposed by Sen. Lane Larson of Billings, would have created a Coal Bed Methane Reclamation Act similar to mining laws administered by the Department of Environmental Quality. Currently, oil and gas reclamation is under the purview of the Board of Oil and Gas Conservation.

Both measures failed. (For complete bill text: <http://leg.state.mt.us/css/bills/default.asp>)

But lawmakers, recognizing that the issues brought forth in the proposals were pertinent to Montanans, did pass House Bill 790. The measure was carried in the House by Rep. Jim Peterson and in the Senate by Sen. Glenn Roush. The law created the Split Estate/Coal Bed Methane subcommittee of the Environmental Quality Council. The bill provided \$50,000 for the subcommittee to study many of the issues raised in the failed Senate bills.

## Chapter 2 - The Interim Process

The Environmental Quality Council (EQC) is a state legislative committee created by the 1971 Montana Environmental Policy Act (MEPA). As outlined in MEPA, the EQC's purpose is to encourage conditions under which people can coexist with nature in "productive harmony". The committee fulfills this purpose by assisting the Legislature in the development of natural resource and environmental policy, by conducting studies on related issues, and by serving in an advisory capacity to the state's natural resource programs.

The EQC is a bipartisan committee with 17 members: 6 state senators; 6 state representatives; 4 members of the public; and 1 nonvoting member who represents the Governor. The House, Senate, and public members are all chosen by the majority and minority leaders of each house. EQC members are limited to three 2-year terms.

In accordance with HB790, the EQC appointed six members from the council to serve on the Split Estate/CBM Subcommittee, including Sen. Mike Wheat, the chair, Sen. Dan McGee, the vice chair, Rep. Norma Bixby and Rep. Jim Peterson. Public EQC members appointed were Brian Cebull, who works for Nance Petroleum Corp. of Billings; and Doug McRae, a Forsyth-area rancher.

Those members culled through more than 70 applications from people all over Montana as well as other states for the remaining six at-large positions. The large number of applications foreshadowed the high interest the issue would generate in the coming months.

The EQC members of the HB790 subcommittee recommended, and the co-chairs of the EQC, with concurrence from the vice co-chairs, appointed: Connie Iversen, a landowner in Culbertson; Joe Owen, a Billings landman; Jim Rogers, a Colstrip landowner and supervisor for the Rosebud Conservation District; Lila Taylor, a Busby rancher and former lawmaker; Bruce Williams, a vice president for Fidelity Exploration and Production Co., based in Sheridan, Wyo.; and David Woodgerd of Stevensville, a former attorney for the state.

Also appointed to work with the subcommittee, but were not voting members were Rep. Rick Ripley and Sen. Glen Roush.

The enacting legislation contained specific study parameters. The bill specifically requested that the following issues be studied:

1. split estates with regard to ownership of minerals and the ownership of surface property related to oil and gas development;
2. reclamation of surface property affected by coal bed methane development; and
3. bonding requirements for coal bed methane production.

HB 790 also provided that the portion of the study addressing split estates must include:

1. procedures and time lines for giving notice to surface owners;
2. minimum provisions for surface use agreements. Elements that should be considered in surface use agreements are:
  - a. road development,
  - b. onsite water impoundments, and
  - c. the quality and disposal of produced water.
3. provisions for addressing disagreement on estimated damages between the surface owner and the mineral owner; and
4. bonding requirements, if any, based on the type of activity.

HB 790 provided that the portion of the study addressing reclamation and bonding for coal bed methane operations must include:

1. assessing current requirements for reclamation and bonding for coal bed methane operations and determining if they are adequate;
2. evaluating laws related to surface damage, coal bed methane exploration, coal bed methane operations, and coal bed methane reclamation in other states;
3. exploring alternatives and approaches for balancing mineral rights with surface rights;
4. identifying the relationship between federal law and state law with regard to split estates and jurisdiction; and
5. evaluating the necessity and feasibility of post-operation reclamation requirements or alternatives, including water pits and impoundments.

To accomplish these tasks, the subcommittee adopted a work plan that included research, presentations and panel discussions.

1. procedures and time lines for giving notice to surface owners
  - Study index of related research. Staff. Ongoing.
  - Summary of recent case law regarding split estates. Staff. Aug. 2005
  - Flow chart of oil/gas permitting. Staff. Aug. 2005
  - Comparison of state surface owner laws. Staff. Sept. 2005
  - Public testimony and agency panel discussion. Sept. 2005
  - Outline of surface owner options. Staff. Oct. 2005
  - Presentation of Wyoming's new split estate law. Oct. 2005
  - MBOGC presentation on current statute, rules. Dec. 2005
2. minimum provisions for surface use agreements (elements that should be considered include road development, onsite water impoundments, quality and disposal of produced water)
  - Study index of related research. Staff. Ongoing.
  - Comparison of state surface owner laws. Staff. Sept. 2005
  - Examples of surface use agreements. Staff. Oct. 2005
  - Outline of surface owner options. Staff. Oct. 2005
  - Presentation of Wyoming's new split estate law. Oct. 2005
  - MBOGC presentation on current statute, rules. Dec. 2005
3. address disagreement on estimated damages
  - Study index of related research. Staff. Ongoing.
  - Comparison of state surface owner laws. Staff. Sept. 2005
  - Public testimony and agency panel discussion. Sept. 2005
  - Outline of surface owner options. Staff. Oct. 2005
  - Presentation on Wyoming mediation. Oct. 2005
  - Presentation of Wyoming's new split estate law. Oct. 2005
  - MBOGC presentation on current statute, rules. Dec. 2005
4. bonding requirements based on the type of activity
  - Study index of related research. Staff. Ongoing.
  - Comparison of state surface owner laws. Staff. Sept. 2005

- X Public testimony and agency panel discussion. Sept. 2005
- X Outline of surface owner options. Staff. Oct. 2005
- X Presentation of Wyoming's new split estate law. Oct. 2005
- X MBOGC presentation on current statute, rules. Dec. 2005
- X BLM policy on bonding impoundment ponds. Jan. 2005
- X Reclamation and bonding. DEQ; MBOGC, BLM.. March 2006

5. assess current reclamation/bonding requirements for coal bed methane operations

- X Study index of related research. Staff. Ongoing.
- X Flow chart of oil/gas permitting. Staff. Aug 2005
- X Comparison of state surface owner laws. Staff. Sept. 2005
- X Public testimony and agency panel discussion. Sept. 2005
- X MBOGC presentation on current statute, rules. Dec. 2005
- X BLM policy on bonding impoundment ponds. Jan. 2005

6. evaluate statutes for surface damage, coal bed methane exploration, coal bed methane operations, and coal bed methane reclamation

- X Study index of related research. Staff. Ongoing.
- X Comparison of state surface owner laws. Staff. Sept. 2005
- X Public testimony and agency panel discussion. Sept. 2005
- X MBOGC presentation on current statute, rules. Dec. 2005
- X BLM policy on bonding impoundment ponds. Jan. 2005

7. explore approaches for balancing mineral rights and surface rights

- X Study index of related research. Staff. Ongoing.
- X Summary of recent case law regarding split estates. Staff. Aug. 2005
- X Flow chart of oil/gas permitting. Staff. Aug 2005
- X Comparison of state surface owner laws. Staff. Sept. 2005
- X Public testimony and agency panel discussion. Sept. 2005
- X Presentation on Wyoming mediation. Oct. 2005
- X Presentation of Wyoming's new split estate law. Oct. 2005
- X MBOGC presentation on current statute, rules. Dec. 2005

8. identify relationship between federal law and state law related to split estates

- X Study index of related research. Staff. Ongoing.
- X Summary of recent case law regarding split estates. Staff. Aug. 2005
- X Flow chart of oil/gas permitting. Staff. Aug 2005
- X BLM policy on bonding impoundment ponds. Jan. 2005
- X History and current situation regarding new Wyoming law and BLM response. Staff. March, 2006
- X Report from BLM split estate listening session. Staff. March, 2006

9. evaluate necessity and feasibility of post-operation reclamation requirements or alternatives, including water pits and impoundments

- X Study index of related research. Staff. Ongoing.
- X Flow chart of oil/gas permitting. Staff. Aug 2005
- X Comparison of state surface owner laws. Staff. Sept. 2005
- X MBOGC presentation on current statute, rules. Dec. 2005

- Public testimony
- BLM policy on bonding impoundment ponds. Jan. 2005
- Reclamation and bonding. DEQ, MBOGC, BLM. March 2006

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### Chapter 3 - Public Involvement

From the beginning of the interim, subcommittee members placed a high value on hearing from those who deal on a daily basis with issues outlined in the study.

The subcommittee held meetings in Havre, Sheridan, Wyo., and Sidney. Besides setting aside five days for those three meetings and associated site tours, committee members traveled more than 1,600 miles to attend the field hearings.

Those areas were chosen because of their proximity to different types of energy development. Conventional natural gas is predominant in the Havre area while oil is the chief product produced in Sidney. Nearly all of the state's coal bed methane activity is taking place in the area just north of Sheridan, Wyo. Another reason for choosing Sheridan was that in 2005, Wyoming passed a split estate law and panel members wanted to hear testimony from those affected by that law.

At each of those three meetings, about 70 people attended. More than 20 people testified at each of the hearings in Havre and Sidney, while 34 stepped up to the podium in Sheridan. The testimony stretched over several hours at each meeting. While attendees were free to talk about any issues related to oil and gas development, the committee asked for specific testimony on these issues:

- \* Suggested procedures and time lines for operators, if any, to provide notice to surface owners of impending mineral development;
- \* Proposed minimum provisions, if any, for surface use agreements, including but not limited to the road development, onsite water impoundments and the disposal of produced water;
- \* Suggested measures, if any, for addressing disputed damage estimates between operators and surface owners; and
- \* Proposed bonding requirements, if any.

In addition to much public testimony, the field meetings also garnered significant attention in local newspapers, thus informing an even wider audience about the issues and the work of the committee. **(Appendix XXXX clips)**

Time and again during the field meetings, the committee was thanked by residents for coming to town. In Sidney, Scott Staffanson strode to the podium, leaned down to the microphone and quietly said he didn't speak much in public - the last time may have been in 4-H.

But Staffanson overcame his shyness to say he was grateful the panel would leave the confines of the capital city.

"It's not very often that somebody comes to Sidney and says, 'Tell us your problems,'" Staffanson said.

Among surface owners, some advocated at least some changes to Montana's Surface Owner Damage and Disruption Compensation statute (82-10-501; MCA). The law details drilling notice procedures as well as compensation.

In Havre, Daryl Sather told the committee that his backyard is changing. And there isn't much he can do about it.

Although he owns or leases the dirt, he does not own the minerals underneath. That means a natural gas developer may build roads, dig ponds and bury pipelines on his property to extract gas.

While Sather's "backyard" consists of hundreds of acres of Northern Montana farmland, he told committee members to think how they would react if the flowerbeds and grass around their homes were torn up.

"It's a very trying time for us," said Sather.

Extending the minimum notice and implementing surface bonds were common requests from surface owners.

Industry and its supporters also were well represented, with some advocating few if any changes to current laws.

Cole Chandler of Klabzuba Oil and Gas, Inc., said the company knows development affects the land, but with reclamation the effects are temporary. He likened the relationship of a mineral owner and a surface owner to a marriage: there are likely to be problems, but good communication can solve most of them.

"We live here; our numbers are in the phone book. We have to live with what we do," Chandler said. "We are very proud of what we do."

Patrick Montalban of the Northern Montana Oil and Gas Association said communication between some operators and surface owners may need to be improved, but added that mineral owners lawfully have the right to access their property.

"You will not stop the mineral owner from developing his minerals," Montalban said at the Havre meeting.

In Sidney, resident and state senator, Don Steinbeisser said the current law works OK, but could use some fine tuning, such as requiring the mineral developer to give the surface owner more than 10 days notice of operations.

Others cautioned the panel to be wary of making wholesale changes to statute for fear that onerous regulations would drive oil companies out of state.

"If you make it too tough with legislation, they'll leave," said Don Franz. "They did it before."

The committee also held six meetings in Helena, taking public comment at each.

At a January 2006 meeting in Helena, six industry representatives addressed the panel. Drilling rigs don't just show up out of the blue and demand access to private land, representatives of the oil and gas industry said. Rather, landowners are often contacted weeks and sometimes months ahead of drilling.

"The notion that a drilling rig 'just shows up unannounced' I would submit, is patently false," said Bob Fisher of Ballard Petroleum Holdings in Billings.

Current law says notice of drilling operations must be given to the surface owner at least 10 days and not more than 90 days before commencement.

Dave Galt of the Montana Petroleum Association said that since the law was enacted in 1981, the statute has been reviewed many times with the same conclusion: "What we have in place at this time serves the industry and surface owners well."

Summary minutes of all meeting of the subcommittee as well as audio minutes of the Helena meetings are archived at:

[http://leg.state.mt.us/css/lepo/2005\\_2006/subcommittees/HB\\_790/default.asp](http://leg.state.mt.us/css/lepo/2005_2006/subcommittees/HB_790/default.asp)

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## Chapter 4 - On the ground - site tours

In addition to hearing first-hand the concerns of those who deal with oil and gas development, committee members determined it was important to see with their own eyes the way different types of drilling operations are conducted and reclaimed.

The committee toured sites in Havre, Sheridan, and Sidney. In each case, the tours were arranged with cooperation between representatives of industry and surface owners. Committee members traversed dusty roads in buses, enduring 100 degree temperatures in Havre and below zero weather in Sidney.

Led by landowner Daryl Sather and representatives of Klabzuba Oil and Gas, the committee saw several aspects of natural gas production in the Havre area, including compressor stations and a water impoundment pit. The tour was put together by Klabzuba and the Montana Land and Mineral Owners Association.

During the trip to Sheridan, the committee toured coal bed methane sites around Decker, Mont. The group spent most of the day viewing a weed management project, a water treatment facility and a managed irrigation project. Those involved in the tour included Fidelity Exploration & Production Co., Pinnacle Exploration and the Northern Plains Resource Council.

Around the Sidney area, committee members saw several aspects of the latest oil boom, including drilling rigs and existing wells. Nance Petroleum and the Northeastern Montana Land and Mineral Association coordinated the tour.

Staff also provided the members with maps showing current wells as well as abandoned wells in selected Eastern Montana counties. **(Appendix ??)**

PHOTOS

## Chapter 5 - Research & Presentations

### Research

Scattered throughout Montana law are statutes that apply to oil and gas development in the state. Federal regulations also sometimes apply.

Much of the regulation of the oil and gas industry in Montana is the responsibility of the Board of Oil and Gas Conservation (MBOGC), which is attached to the Department of Natural Resources and Conservation. The Board was created in 1953 and renamed in 1971. Its duties are detailed in Title 82, Chapter 11 of the MCA. The statutes are implemented in title 36, Chapter 22 of the Administrative Rules of Montana.

The seven-member board, which is appointed by the governor, must consist of three representatives of the oil and gas industry with at least 3 years' experience in the production of oil and gas; and two members who are landowners residing in oil or gas producing counties of the state but not actively associated with the oil and gas industry. One of the landowners shall own the mineral rights with the surface and the other shall be one who does not own the mineral rights.

One member also must be an attorney licensed to practice in Montana.

The board's duties include issuing drilling permits, establishing well spacing units and land pooling orders, inspecting drilling, production and seismic operations; investigation complaints, conducting engineering studies; and collecting and maintaining well data and production information. The board also administers the federal Underground Injection Control Program for Class II injection or disposal wells under the Safe Drinking Water Act.

The board oversees most operations on state and private lands that may have state or private minerals underneath. In areas where the federal government owns and leases the minerals, the U.S. Bureau of Land Management is the lead agency.

Since 1987, the MBOGC and the BLM have been coordinating their decisions on drilling permits. Under an agreement, the MBOGC concurs with BLM approval of drilling permits for federal minerals in Montana.

The Montana Department of Environmental Quality (DEQ) also plays a role in the regulation of oil and gas operations. The agency implements laws related to water and air quality as well as management of waste.

Since the DEQ is delegated the responsibility for administering some federal environmental laws, such as the Clean Water Act and the Clean Air Act, the agency is involved in operations where the federal minerals are leased.

Attached to the DEQ is the Board of Environmental Review. The board consists of seven members appointed by the governor. The members must be representative of the geographic areas of the state. One member must have expertise or background in hydrology. One member must have expertise or background in local government planning. One member must have expertise or background in one of the environmental sciences. One member must have expertise or background as a county health officer or as a medical doctor.

One member must also be an attorney licensed to practice in Montana.

The Board of Environmental Review adopts rules and standards for how the DEQ carries out the intent of the law. For example, state statute gives the board the authority to adopt rules "governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems."

On Tribal lands, the Bureau of Indian Affairs and the Environmental Protection Agency assume some of the duties of the BLM and the DEQ, respectively.

For more information on the various permitting scenarios for oil and gas developments, please see the flow charts in **Appendix ??**

The subcommittee largely focused on Montana's Surface Owner Damage and Disruption Compensation statute, Title 82, Part 10, Chapter 5, MCA. As part of the evaluation of those laws, the panel reviewed similar laws in other states. Please see **Appendix???** for a summary of key part of those laws.

## **Presentations**

Many of the subcommittee meetings included presentations scheduled by the panel as well as impromptu presentations during the extensive public comment periods. Following are brief summaries of those presentations solicited by the subcommittee. Many presenters also answered multiple questions from the committee. Those responses, summaries of all personations, as well as audio recordings for those made in Helena are available on the subcommittee's web site:

[http://leg.state.mt.us/css/lepo/2005\\_2006/subcommittees/HB\\_790](http://leg.state.mt.us/css/lepo/2005_2006/subcommittees/HB_790)

### **Sept. 15, 2005, Helena**

Jeanie Alderson, an eastern Montana rancher and member of Northern Plains Resource Council, said the 10-day notice requirement is too short and should be modified to one year. She also said landowners should be included in all leasing decisions before development occurs, landowners should be notified when their minerals are leased and arbitration should be utilized in the event damages are incurred by the landowner. Ms. Alderson suggested a bond be implemented to protect surface owners in the event a company disappears and leaves the landowner with substantial damages.

Wayne Ransbottom, Land Manager for Fidelity Exploration and Production Company of Sheridan, Wyo., said Fidelity tries to begin negotiations at least eight months in advance of any proposed development. He explained the negotiation procedure used by Fidelity prior to development to identify and address landowners' special needs. Mr. Ransbottom explained the need for repeated access to land prior to submitting a development plan. When a plan of development is submitted to the Bureau of Land Management (BLM), prior to development he said that is another opportunity for the surface owner to interject with objections or concerns. He added that careful planning with the surface owner can minimize surface impacts.

Sen. Keith Bales, a surface and mineral owner, said surface use agreements have changed over the years, which makes him skeptical about putting into law what should be included in a surface use agreement. Sen. Bales said that if a surface use agreement listed what damages landowners could be paid for, landowners would be severely limited. He said the subcommittee should not recommend a law that would limit his potential as a landowner.

Sen. Bales believed a 30-day notification period would be ample, but he was uncertain about the need to extend the notification period. He said bonding should be used only as a last resort and identified other sources of funding that could be used regarding coal bed methane development. Sen. Bales spoke about laws passed in Montana in the 1970s that resulted in a coal boom for Wyoming. Sen. Bales believed Montana should be developing its own natural resources.

Ray Muggli, a land and mineral owner in southeastern Montana and a member of the Northern Plains Resource Council, said he is concerned about the magnitude of coal bed methane development and the resulting damage to the surface, especially containment ponds and the sodium content of those ponds. He said Montana should find a better way to manage the water and soil in the Tongue River Valley. He said the 10-day notice requirement is inadequate.

Will Lambert of the Bureau of Land Management, provided background information on BLM duties. Mr. Lambert said that in most cases, agreements between landowners and oil and gas companies are reached, and his experience indicates there have been very few conflicts between landowners and oil and gas producers. He said the BLM's notification period is, at a minimum, 30 days due to the BLM's posting requirements. Mr. Lambert said the BLM includes the landowner in its decisions. In addition, BLM requires bonding to cover noncompliance; plugging of wells, nonpayment of royalties, and reclamation. The bonding has a minimum amount of \$1,000 and the amount is determined by the level of risk. Mr. Lambert referred to a United States Department of Interior memorandum which sets forth BLM's process **(Appendix IM2003)**

Monte Mason, the Minerals Management Bureau Chief, Montana Department of Natural Resources and Conservation (DNRC), gave an overview of DNRC's process of leasing minerals. Mr. Mason said surface owners are able to bid on leases in the public process and successful landowners are obligated to diligently develop the minerals. DNRC does not hold separate bonding on its leases. Mr. Mason said landowners are entitled to compensation for damages, and the lessee must repair, replace, or compensate for any damages. In addition, lessees must provide confirmation that they have met with the surface owner and have reached an agreement. If the lessee has made a good-faith effort to reach an agreement with the surface owner, the DNRC may authorize the lessee to proceed. Mr. Mason explained how arbitration is also an element of state land leases. **(SEE APPENDIX ?? for DNRC lease info)**

Greg Petesch, Chief Legislative Attorney, addressed the Accommodation Doctrine and Model Surface Use and Mineral Development Accommodation Act. Mr. Petesch provided a history of the drafting committee that wrote the Model Surface Use and Mineral Development and Accommodation Act, which codifies the Accommodation Doctrine which was developed through common law and case law. Mr. Petesch said the right to develop the mineral estate overrides the surface estate, and carries with it implied easements of access and requires the mineral plan to accommodate surface uses. Whenever state land is sold, the state is required to reserve the mineral rights; therefore, a split estate is created whenever the state sells land. Mr. Petesch directed the Subcommittee to the comments contained in the Model Surface Use and Mineral Development Accommodation Act **(SEE APPENDIX ???)**

#### **Sept. 16, 2005 (EQC meeting)**

Jim Halvorson, Petroleum Geologist, Montana Board of Oil and Gas Conservation, reviewed well permitting requirements and processes. **Appendix ??**

Will Lambert of the Bureau of Land Management explained the BLM's permitting process and bonding. The operator submits a complete Application for Permit to Drill (APD) that includes evidence of bond, a survey plat, a drilling plan, a surface use plan, interim reclamation and final reclamation plans, and a water management plan. For split-estates, the operator is required to submit certification that an agreement has been reached with the landowner. APDs are posted for a minimum of 30 days. The BLM is required to comply the National Environmental Policy Act. For coal bed methane development, the BLM works with the MBOGC and DEQ to do a joint environmental analysis. The environmental analysis results in conditions of approval for permit to drill which become attached to the APD and are subject to enforcement. He said his agency's goal is to issue APDs within 35 days, although the coal bed methane process takes at least four months. The BLM utilizes lease bonds for \$10,000, statewide bonds for \$50,000, and nationwide bonds for \$150,000, and BLM has authority to raise bond amounts if it determines an operator is an at-risk operator. BLM has not experienced any defaults on bonds in Montana in the past six years. For split estates, the BLM requires operators to enter into good-faith negotiations with landowners and, in the majority of cases, this is achieved. If an agreement cannot be reached with the landowner, the operator is required to post a minimum \$1,000 bond, which will be used for damages to crops and tangible improvements. The landowner has the right to protest the bond amount set by BLM.

Tom Reid, Supervisor of Water Quality Permitting, Montana Department of Environmental Quality discussed regulation of pollutants discharged to state waters.

Jack Stults, Division Administrator, Water Management, Montana Department of Natural Resources and Conservation, addressed coal bed methane development and how it affects water rights. He said CBM discharge is a byproduct and not a beneficial use of water. In the Power River Basin Controlled Groundwater Area, he said the water byproduct of CBM does not inherently create or require a water right. The Controlled Groundwater Area requires all producers to offer a mitigation agreement to every water right within one mile of any CBM well. This shifts the burden of proof to the producer if a well is impacted. If a well is impacted, the one-mile requirement expands out from the impacted well.

**Oct. 27, 2005, (Sheridan, Wyo.)**

Rep. Rosie Berger, (R)--Big Horn, Wyo., explained how she pursued legislation to address split estates. She said producers are now doing a lot more planning since the new legislation acts as a hammer and requires that surface owners be included in planning. But she added that the law may need to be tweaked in the future. Rep. Berger identified competition among developers as an unintended consequence of the legislation. Mediation is included as part of the surface use agreement, which is a private contract between the landowner and the developer. She said it is too early to know whether the legislation was effective.

Laurie Goodman, President of the Landowners Association of Wyoming, said her organization was formed to pass Wyoming's legislation and to focus on the legal aspects of the legislation. She said the legislation contained a 30-day notice requirement, but it had been suggested landowners need a minimum of 6-months' notice. Ms. Goodman said well spacing should be required to be disclosed since well spacing directly impacts the land. She advised the Subcommittee to avoid mandating what the surface use agreement should look like and to leave those decisions up to the landowner. Ms. Goodman emphasized the importance of "lost land value" language and explained how landowners can be impacted for more acreage, depending upon the land's use. Loss should include commercial, agricultural, and lost land values. Wyoming's legislation did not contain any damage appraisal language. She discouraged lengthy bonding provisions, and said waivers are important cases where

landowners are satisfied with their current situation. She said she would have liked to strengthen the provisions for water management and water protection.

Lucy Hanson, the coordinator for the Wyoming Agriculture and Natural Resource Mediation Program, explained the state's mediation program and how it relates to the Wyoming Split Estate Initiative. She suggested the Subcommittee would need to give consideration as to who would be the entity that would take the initial request for mediation and act as the coordinating entity.

### **Dec. 9, 2005 (Sidney)**

Dennis Guenther of Nance Petroleum, provided an overview on the process utilized by Nance Petroleum when it is contemplating drilling. Guenther said the company provides notice at least 10 days before staking the well and, if asked by the surface owner, a lessee will be contacted as well. The 10-day notice gives the operator flexibility, he said in the case of rigs becoming available on short notice, spring rains preventing access to a location, or an unexpected dry hole. Having a rig on standby is expensive, he added. In regards to bonding, he said the state bond is already in place, the operator is liable for any damages not included in the agreement and the agreement covers damages. In more than 25 years of business, he said he has always reached agreements with surface owners.

Dennis Trudell of the Northeastern Montana Land & Mineral Association said the current law needs "teeth" and a longer notification period. He said annual rental fees would protect the landowner and provide fair compensation for the inconvenience, disruption, and damages the landowner experiences, but that landowners do not pursue the annual rental amount since it would necessitate hiring an attorney.

Tom Richmond, administrator of the Montana Board of Oil and Gas Conservation, explained some aspects of current law in Montana and other states and suggested how changes might be made if the subcommittee chooses to support legislation. **(Appendix ??)** Richmond did not advocate changes, but his comments included:

- Current law says notice of drilling operations must be given to the surface owner at least 10 days and not more than 90 days before commencement. Richmond said it could be changed to 20 days and 180 days.
- Providing notice to surface owners when minerals are leased could prove difficult, Richmond said, because a single tract could have more than 30 mineral owners.
- Richmond said Montana law, which now implies that there must be a surface damage agreement, could be made clearer. He said the question of state involvement in a private agreement is a difficult one, but added that some key elements to be included in agreements could be outlined in statute.
- Wyoming mandates a \$2,000 surface bond if the landowner and the mineral developer cannot reach a damage agreement. Richmond said such a requirement could be contested in court. But he added that if Montana adopted that kind of law, it should be very specific about who would hold the bond. On other bonding issues, Richmond said the committee should consider the comprehensiveness of current rules, adding that there have been very few orphaned wells – those abandoned by the developer – since 1980.
- Laws in Montana, Wyoming, and North Dakota generally do not separate coal bed methane development from traditional oil and gas regulations, Richmond said, adding that doing so could make regulation more difficult.

Richmond also included information current coal bed methane regulations and orphan wells.  
**Appendix ???**

## **January 26, 2006 (Helena)**

Dave Galt of the Montana Petroleum Association oil and gas operations in Montana vary in size and in other aspects. He said the current law has been reviewed and serves both surface owners and the industry well. Mr. Galt said the MPA is working with the Farm Bureau and others to on an informational document to assist surface owners in working with oil and gas operators.

Bob Fisher of Ballard Petroleum Holdings in Billings, said the current notification period works and is fair. Generally, he said surface owners are contacted a considerable time before drilling operations. Extending the notification period, he said, would allow those who do not want the development on their land to use the notification to delay the process.

Mark Carter of the Encore Acquisition Company said drilling schedules can change based on drilling results. He added that surface agreements set minimum standards. Mr. Carter said the mineral owner has the right and needs the ability to develop minerals without unnecessary delays and changing the law would deter drilling in Montana. That, he said, would lower tax revenues, decrease high paying jobs, and create undue litigation.

Todd Ennenga of Devon Energy Corp., said mandating surface agreements and the language in them would erode good will between surface owners and mineral developers. He said the 10 day notice is adequate, especially considering such things as changes in weather and the availability of drilling rigs. he said a waiver should be included so the operator can enter property for certain emergencies. Mr. Ennenga also said a brochure should be created that spells out the rights of both parties and can be widely distributed.

Colby Branch, a natural resource attorney with the Crowley Law Firm in Billings, said the Subcommittee should not recommend any changes to the current statute. He said legislation that reallocates the rights of the surface owners and the mineral owners would rewrite thousands of deeds and oil and gas leases. He said the Supreme Court determined statutes must serve a public, not private, interest, and the state should not get involved in a private contract between two parties. Mr. Branch said the 10-day notice is sufficient, the current law provides adequate compensation for damages and the courts can be used to resolve damage disputes. He said legislation would not affect federally reserved minerals managed by the BLM since they are governed by federal law.

Patrick Montalban, of Altamont Oil and Gas referred to a letter he sent to the committee which suggested the 10-day notice be changed to 15 days and that a committee be established under the Montana Board of Oil and Gas Conservation that can adjudicate disputes between the surface owner and mineral developer.

## **March 16, 2006 (Helena)**

Tom Richmond of the Montana Board of Oil and Gas Conservation (MBOGC), discussed current bonding laws and rules. Mr. Richmond made the distinction between reclamation bonds and the use of those bonds to restore the surface, and "bonding on," which are used to pay the landowner for damages.

Jim Albano, the lead minerals specialist for the Bureau of Land Management (BLM) in Billings explained that an oil and gas lessee or operator must have a bond before disturbing the surface for drilling operations. The BLM can increase the amount of the bond if it is determined the operator has an increased level of risk. The bond can be also be increased if five years previous to a drilling proposal, a demand was made on a bond for plugging and reclaiming land. In reference to split estates, Mr. Albano emphasized

a good-faith effort needs to be undertaken by the mineral lessee to negotiate either a surface agreement or obtain a waiver from the surface owner. Mr. Albano explained that bonding on is required if no agreement between the surface owner and operator is reached, and the purpose of the bond is to assure compensatory protection for the surface owner. Mr. Albano said the BLM never utilized bonding on from 1992 until 2004. Mr. Albano stated there is always a possibility that an agreement can be reached anytime in the process, which would necessitate termination of the bond. He provided a copy of a brochure the BLM produced as a guide to mineral development on split estates (**Appendix ???**)

Steve Welch of the Department of Environmental Quality (DEQ), provided an overview of how his agency bonds for various mining activities as well as solid and hazardous waste management. What the bonding for all areas have in common, he said, is that the bond be sufficient for a third party to perform work to specific standards. He discussed Coal and Uranium Prospecting Bonding and the U.S. Department of the Interior and submitted the Office of Surface Mining's Handbook for Calculation of Reclamation Bond Amounts.

## Chapter 6 - Decision making process

At its second meeting, the committee decided that recommendations to the Environmental Quality Council would need to garner at least 8 votes out of the 12 members. While members said they would strive to reach consensus, they also acknowledged that doing so on all matters related to what could be contentious issues may not be realistic.

The committee instructed staff to prepare a list of regulatory options to serve as a guide for committee discussion. After discussing the initial option document, the committee further instructed staff to poll individual committee members on each of the options. Those results were compiled and reviewed by Sens. Wheat and McGee as they prepared the initial bill draft.

The results of the committee survey are in **Appendix ??** From the initial bill draft, the committee then submitted suggestions and amendments, each of which was voted upon. Only those winning at least 8 votes are included in the draft.

The final bill draft was also voted upon with a vote of ??? to ???

The entire report received a vote of ??? to ???

